

FCC MAIL SECTION

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Federal Communications Commission

DA 97-2229

DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Sault Ste. Marie, Michigan)

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MM Docket No. 97-222
RM-9180

NOTICE OF PROPOSED RULE MAKING

Adopted: October 15, 1997

Released: October 24, 1997

Comment Date: December 15, 1997

Reply Date: December 30, 1997

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Northern Christian Radio, Inc. ("Northern"), requesting the allotment of Channel 272C3 at Sault Ste. Marie, Michigan, and reservation of the channel for noncommercial educational broadcasting.¹ Northern submitted an engineering analysis in support of the proposal and states its intention to apply for Channel *272C3 at Sault Ste. Marie.

2. In support of the petition, Northern expresses its desire to provide the community of Sault Ste. Marie with an additional noncommercial educational FM service. According to Northern there are no channels in the reserved portion of the band available for use at Sault Ste. Marie due to the proximity of the community to Channel 6 Television Station WCML-TV, Alpena, Michigan, and Canada. Northern submits that this case is an appropriate situation for the allotment and reservation of a channel for noncommercial use because the reserved band at Sault Ste. Marie is limited by both foreign allocations and the proximity of a VHF Channel 6 Television Station. Northern points out that Sault Ste. Marie is located on the Canadian border and within the grade B contour fringe of WCML-TV, Alpena, Michigan, and as a result, Station WLSO(FM) is the only reserved noncommercial educational FM station licensed to Sault Ste. Marie. Further, Northern states that the FCC issued the license for WLSO(FM) to Lake Superior State University only after a special treaty was negotiated with Canada.² Northern argues that

¹ Northern is the licensee of noncommercial educational FM Stations WHPN, Gaylord, Michigan, and WOLW, Cadillac, Michigan.

² See FCC File BLED-931018KB.

under the circumstances, the reservation of a commercial channel for noncommercial use at Sault Ste. Marie is appropriate to provide a second such service in the community.³

3. Generally, noncommercial educational stations operate within the reserved portion of the FM band (Channels 201-220). However, exceptions have been made where channels in the noncommercial educational band are not available because of foreign allotments (Canadian or Mexican) or potential interference to operation on VHF Television Channel 6. A Commission analysis indicates that of the 20 NCE-FM channels, a vacant allotment at Sault Ste. Marie, Ontario, Canada, on Channel 215B poses the only possibility for an NCE-FM assignment at Sault Ste. Marie, Michigan. The allotment of Channel 215B at Sault Ste. Marie, Michigan, would require a change in the U.S.-Canadian Treaty and reassignment of Channel 215B from Sault Ste. Marie, Ontario, Canada, to Sault Ste. Marie, Michigan, and Northern would still have to show TV 6 protection. Therefore, foreign allotments and potential interference to Station WCML-TV, Alpena, Michigan, appear to justify the reservation of a channel in the nonreserved band (Channel 221-300) for noncommercial educational use. The allotment and reservation of a commercial channel appears to be the only way to provide an additional noncommercial educational channel to Sault Ste. Marie, Michigan.

4. We believe the public interest would be served by proposing to allot Channel 272C3 to Sault Ste. Marie, Michigan, and to reserve the channel for noncommercial educational use. See Buhl, Minnesota, 9 FCC Rcd 2606 (1994) and Fort Kent, Maine, 7 FCC Rcd 1362 (1992). Our review of Northern's proposal confirms that Channel 272C3 can be allotted to Sault Ste. Marie, Michigan, consistent with the minimum distance separation requirements of the Commission's Rules at a site 15.9 kilometers (9.9 miles) south of the community.⁴ Our analysis shows that the allotment would be short spaced to Channel 271A, Blind River, Ontario, Canada.⁵ Therefore, we will request concurrence from the Canadian government for the allotment of Channel *272C3 at Sault Ste. Marie, Michigan, as a specially negotiated short spaced allotment.

5. In view of the foregoing, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Sault Ste. Marie, as follows:

Community	Channel No.	
	Present	Proposed
Sault Ste. Marie, Michigan	253C3, 258C2, 267C1	252C3, 258C2, 267C1, *272C3

³ Northern cites Comobabi, Arizona, 47 FR 32717, July 29, 1982, and Lindside, West Virginia, 2 FCC Rcd 6046 (1987).

⁴ The coordinates for Channel 272C3 at Sault Ste. Marie are 46-21-36 and 84-25-36.

⁵ Channel 271A at Blind River is currently vacant with a request to delete the channel.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **December 15, 1997**, and reply comments on or before **December 30, 1997**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on petitioner's counsel, as follows:

Jeffrey D. Southmayd
Southmayd & Miller
1220 19th Street, N.W., Suite 400
Washington, D. C. 20036

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission,

Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.